

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. _____

C. C. HARAWAY.....*Petitioner,*

v.

STATE OF ARKANSAS.....*Respondent.*

BRIEF IN SUPPORT OF PETITION FOR WRIT
OF CERTIORARI

OPINION OF THE COURT BELOW

I.

The judgment of the Supreme Court of Arkansas was rendered February 16, 1942, with opinion, is found at pages 75 to 81 of the record, and is reported in Volume 76, No. 3 of the Law Reporter, page 93.

The motion for rehearing filed by petitioners was on March 30, 1942, overruled (R. 84) and the judgment thereby became final. Pope's Digest of the Statutes of Arkansas, Section 2777.

II.

GROUNDS OF JURISDICTION

1. Jurisdiction for certiorari is conferred upon this Court by Section 237 (b) of the United States Judicial Code as amended by the act of February 13, 1925. 43 Stats. L. 1936, 28 U.S.C.A. 344.

2. The date when the judgment became final was March 30, 1942.

3. The Supreme Court of Arkansas held in the case now before this Court that the petitioner was not discriminated against in the manner of selection of the grand jury and in the selection of an all-negro grand jury under which the indictment was brought. And that the appellant has no more right to complain than a white man would have for having been indicted by an all-white grand jury and that the order of the Court did not direct the sheriff to summon an all-negro grand jury and that the appellant took his chance on its action by waiting until after the return of the indictment to question the proceedings and thereby waiving it. The judgment of the Supreme Court of Arkansas in the present case violates Amendment No. 14 to the Constitution of the United States in that it deprives petitioner of due process and equal protection of the law guaranteed by the same. In the instant case, petitioner properly raised this federal question in the Court of first instant the Circuit Court of Howard County (R. 43) as required by the State practice, and urged it on the appeal to the Arkansas Supreme Court, and further presented the point to the Arkansas Supreme Court in his petition for rehearing (R. 82).

4. Furthermore, the Supreme Court of Arkansas failed to hold in the case now before the Court that the Circuit Court of Howard County was in error in its failure to quash the indictment where it had been shown by the evidence that there was a discrimination in the selection of the grand jury and that this all-negro grand jury was a subterfuge to evade the constitutional rights guaranteed your petitioner under the due process and equal protection clauses of the 14th Amendment to the Constitution and laws of the United States.

5. The following cases are believed to sustain the jurisdiction of this court:

Neal v. State of Delaware, 103 U. S. 370;

Norris v. State of Alabama, 55 S. Ct. 579, 294 U. S. 587;

Patterson v. State of Alabama, 59 S. Ct. 575, 294 U. S. 600;

Pierre v. State of Louisiana, 59 S. Ct. 536, 306 U. S. 354;

Smith, Edgar Petitioner, v. State of Texas, 85 Law Ed. 84;

Strauder v. West Virginia, 100 U. S. 303.

III.

STATEMENT OF THE CASE

It is requested that the statement of the case contained in the preceding petition for writ of certiorari under the heading "Summary Statement of the Matter Involved" (pp. 2 to 5) be taken as the statement at this point, and the same is hereby adopted and made part of this brief. By way of further statement, the testimony on mo-

tion to quash the indictment showed that there were approximately 360 negroes who had paid their poll tax for the year of 1940 which is a prerequisite in the State of Arkansas for grand jury service. That there were 3,280 white persons who paid their poll tax in the year of 1940 (R. 28, 30).

IV.

SPECIFICATION OF ERRORS

It is requested that the matter set forth under the heading "Reasons Relied on the Allowance of the Writ" in the preceding petition for writ of certiorari (pp. 5 to 6) be taken as the specification of errors intended to be relied upon by petitioner.

SUMMARY OF ARGUMENT

POINT ONE

We urge the point that the ruling of the court in the case of *C. C. Haraway v. State of Arkansas*, Vol. 76, No. 3, The Law Reporter, page 93, holding that your petitioner's constitutional rights as guaranteed to him by the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States was not violated in the discriminatory selection of the grand jury and the selection of the all-negro grand jury as erroneously held by the Supreme Court of Arkansas in the above styled case, to correct which this petition is being presented (R. 75 to 81).

POINT TWO

We contend that the judgment of the Circuit Court of Howard County overruling the motion to quash the indict-

ment of the petitioner on September 1, 1941 (R. 15), the evidence having shown discrimination in the selection of the grand jury and that an all-negro grand jury was selected as a subterfuge to evade the constitutional rights guaranteed your petitioner under the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States and violated his rights guaranteed thereby.

ARGUMENT

POINT ONE

A careful reading of the record will demonstrate to the Court that there has been a policy of systematic exclusion of negroes from the grand and petit juries of Howard County for a number of years and that when this question was raised it created a widespread sentiment of resentment among both the law enforcement officials and citizens. And that the order summoning this special grand jury was not a regular, but oral order, and that this special all-negro grand jury was selected as a resentment and for the purpose of evading a selection of a regular grand jury as prescribed by law without discrimination of any kind (R. 55).

The case of *Virginia v. Rieves* (100 U. S. 313), one of the early cases passing on discrimination under the 14th Amendment, citing *Strauder v. West Virginia*, 100 U. S. 303, 25 L. Ed. 664, said: "In this later case we held that the 14th Amendment secures, among other civil rights, to colored men when charged with criminal offenses against the State an impartial jury trial by jurors indifferently selected or chosen without discrimination against such jurors because of their color." Any infringement upon this right is a denial of equal protection of laws guaranteed by the 14th Amendment of the Constitution of the United States. And it is immaterial whether such imprisonment be by positive state of enactment or by reason of custom and practice of state officials. *Strauder v. West Virginia*, 100 U. S. 305, 25 L. Ed. 664; *Neal v. Delaware*, 103 U. S. 370, 26 L. Ed. 567; *Carter v. Texas*, 177 U. S. 442, 20 S. Ct. 687.

In the case of *Montgomery v. State* (Fla.), 45 Southern Reporter 879, the jury was challenged by a negro on the grounds of discrimination in violation of the 14th Amendment to the Constitution of the United States and the Court said:

“The constitutional guarantee of equal protection of the laws does not give to any person a right to a jury composed in whole or in part of his own or any particular race; but every person being tried in a court of jurisdiction is entitled to have a jury selected and summoned without illegal discrimination of any character. In the eyes of the law, all persons of all races are regarded alike, and no person has a right to insist that a person of his race or color shall be on the jury by which he is tried when charged with crime. Or when he is otherwise a part of an action or proceeding. But every person has a right to insist that officials of the law in selecting lists of names of persons to compose the jurors in the court shall not in such selection discriminate against ANY citizen subject to jury duty because of his race, color or previous condition of servitude; and if such official do so discriminate, they violate the Constitution of the United States and the lists of jurors so selected is vitiated and illegal. (Citing *Virginia v. Reives* (100 U. S. 313).

“The petitioner had a right to grand jury where there had been no racial discrimination of any kind. 52 American Law Reports 916.

“If, in drawing or organizing a jury, grand or petit, there was shown, on motion and proof that any citizen of the county and of the United States, possessed the qualifications prescribed by our statute had been left off the panel because of his race or color, it would be the duty of the primary court, before which such motion could alone be made in the first instant, on sufficient proofs or facts, to quash illegal or drawn summon panel or any indictment found by such illegally

constituted grand jury. And such motion might be made by any person affected by the action of such jury, whether Aryan or African race."

POINT TWO

A careful reading of the record will demonstrate further that there were 360 negroes who had paid their poll tax and some 3,280 white persons who had paid their poll tax (R. 28, 30), the negroes being less than ten per cent of the total number of electors. It was highly improbable, if not impossible by chance and without discrimination to have selected an all-negro grand jury.

It is equally clear that the officials of Howard County used this method of selection as a subterfuge to evade a mixed grand jury indiscriminately selected.

The case of *Edgar Smith, Petitioner, v. The State of Texas*, 85 L. Ed. 84, this court's latest adjudication on discrimination in the selection of grand juries, said:

"* * * that chance and accident alone could hardly have brought about the listing for grand jury service of so few negroes from among the thousands chosen by the undisputed evidence to possess the legal qualifications of jury service. * * * What the 14th Amendment prohibits is racial discrimination in the selection of grand jurors. * * * It is a part of tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community. * * * If there has been discrimination, whether accomplished ingeniously, the conviction cannot stand."

The petitioner was entitled to a grand jury selected from the entire district without discrimination in the case of *In re Petition for Special Grand Jury*, 50 Fed. Rep. (2d) Series 973. The Court said:

“While the grand jury may be selected from a particular section of a district, such method of selection should not be employed unless necessary. We are, therefore, of the opinion that the regular method of selection of grand jury from the entire district is the proper method of selection.”

The Constitution and laws of the State of Arkansas guarantees the petitioner the right to trial in all criminal cases by an impartial jury. Art. II, Sections 3-8-10, Constitution of Arkansas, Ch. 103, Sections 6333, 6350, 6352, Crawford & Moses' Digest of the State of Arkansas. Inasmuch as this Court has determined that equal protection of laws demands that an impartial jury be one from which no persons are excluded solely on account of race or color, it follows that due process of law in the state of Arkansas requires that all juries be composed of qualified citizens of that state, none of whom are barred from service thereon solely on account of race or color.

This Court has struck down subterfuge and subtle methods of evading constitutional rights, as well as those open and evident. In the case of *Lane v. Wilson, et al.*, 307 U. S. 268, 59 S. Ct. 872, where the state of Oklahoma passed a statute attempting to nullify and evade a former decision of this Court protecting negroes right to vote as guaranteed by the 15th Amendment, this Court said:

“The amendment nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise, by the colored race, although

the abstract right to vote may remain unrestricted as to race.”

It is respectfully submitted that a writ of certiorari should be issued and that the judgment of the Supreme Court of Arkansas should be reversed.

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